

**HIGH COURT OF TRIPURA  
AGARTALA  
MAC App. No.67 of 2024**

**1. Smt. Kajali Debbarma**  
W/O Shri Mangal Debbarma.

**2. Shri Mangal Debbarma**  
S/O Late Nitai Debbarma.

Both of Village – Mongchu Mog Para,  
P.O. – South Takma,  
P.S. – Santirbazar,  
Belonia, South Tripura.  
Presently residing at Matarbari,  
P.S – R. K. Pur,  
Udaipur, Gomati Tripura.

----- Claimant-Appellants

Versus

**1. Shri Rajib Debbarma**  
S/O Shri Biswa Debbarma,  
Resident of Village – Mongchu Mog Para,  
P.O. – South Takma,  
P.S. – Santirbazar,  
Belonia, South Tripura.  
(Owner-cum-driver of TR-08-C-8765, Motor Bike).

**2. Reliance General Insurance Company Ltd.,**  
Ashram Chowmuhan, Agartala,  
P.S. – East Agartala,  
District – West Tripura,  
(Insurer of TR-08-C-8765, Motor Bike).

----- Opposite Party-Respondents

---

For Appellant(s) : Mr. I. Chakraborty, Adv.

For Respondent(s) : Ms. R. Majumder, Adv,  
Mr. B. Banerjee, Adv,  
Mr. S. Chakraborty, Adv.

Date of hearing : 02.12.2024

Date of delivery of  
Judgment & Order : 07.12.2024

Whether fit for  
reporting : YES

---

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

This appeal under Section 173 of M.V. Act is preferred by  
the appellant-claimant petitioners challenging the judgment and

award dated 17.05.2024 delivered by Learned MAC Tribunal No.1, Gomati District, Udaipur in connection with case No.TS(MAC) No.71 of 2021 for enhancement of the amount of compensation awarded by the Learned Tribunal below. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.16,22,000/- along with 7.5% interest per annum from the date of filing the claim petition i.e. w.e.f. 08.08.2021 to till the date of actual payment and it was also ordered that the appellant-claimant petitioners will equally get the amount. Learned Tribunal below by the said judgment and award also fastened the liability of payment of compensation upon the O.P. No.1 i.e. Rajib Debbarma (owner of Motor Bike bearing No. TR-08-C-8765.

**2.** Heard Learned Counsel Mr. I. Chakraborty appearing on behalf of the appellant-claimant petitioners and also heard Learned Counsel, Mr. B. Banerjee and Learned Counsel, Ms. R. Majumder representing the respondent-owner-cum-driver of the vehicle/Motor Bike bearing No. TR-08-C-8765 and also heard Learned Counsel, Mr. S. Bhattacharjee appearing on behalf of the respondent-Insurance Company.

**3.** In course of hearing, Learned Counsel for the appellants-claimant petitioners submitted that before the Learned Tribunal below, the appellant-claimant petitioners adduced oral/documentary evidence on record in support of their claim but the Learned Tribunal below only awarded sum of Rs. 16,22,000/- which was too less.

Learned Counsel further submitted that 50% of the amount was deducted towards the personal living expenses of the deceased as the deceased was bachelor which was not permissible in the eye of law. So, Learned Counsel for the appellants urged for allowing this appeal by setting aside the judgment and award dated 17.05.2024 delivered by Learned Tribunal below.

**4.** Learned Counsel for the owner-cum-driver of the bike submitted that the alleged policy was covered under a 'Comprehensive/package policy' but the Learned Tribunal below determined the case under 'Act Policy' and at the time of delivery of judgment, fastened the liability of payment of compensation upon the O.P.-owner-cum-driver of the bike.

**5.** Learned Counsel for the Insurance Company also submitted that the Learned Tribunal below after considering the oral/documentary evidence on record rightly and reasonably delivered the judgment/award.

**6.** I have heard argument of both the sides and also perused the judgment delivered by Learned Tribunal below.

**7.** In this case, the appellants-claimant petitioners filed an application before the Learned Tribunal with the plea that on 11.03.2021 at about 15:30 hours when their son Birat Debbarma (since dead) was proceeding towards South Takma from Birchandra Nagar by boarding in a bike bearing No.TR-08-C-8765 which was being driven by one Rajib Debbarma and on the way, when they reached the approached road of Pada Para,

suddenly a dog crossed the road in front of the bike and the rider tried to save the dog but dashed it against a pillar by the side of the road and as a result of which, both the riders sustained injuries on their persons and soon after the accident, the son of the claimant-petitioners was taken to Hospital at Birchandra Nagar from where considering the gravity of the injury he was referred to District Hospital, Santirbazar where the attending doctor declared him as dead. It was further stated that the deceased was a young, energetic boy of 24 years and he was a student of B.A. 3<sup>rd</sup> year and used to do private tuition from which he used to earn Rs.15,000/- per month.

**8.** On the basis of that accident, one police case vide No.07/2021 was registered at Santirbazar P.S. under Section 279/338/304A of IPC with Section 184 of M.V. Act and accordingly, the appellant-claimant petitioners filed the claim petition.

**9.** Before the Learned Tribunal below, the owner-cum-driver of the bike bearing No.TR-08-C-8765 appeared and contested the same by filing written statement denying the assertions of the claim petition. It was asserted that there was no fault on the part of the rider of the motor bike. It was also stated that the bike was duly insured with O.P. No.2 w.e.f. 19.06.2020 to 18.06.2021 and the vehicle had all the valid documents like registration certificate and other connected documents and the rider had valid driving licence.

**10.** The Insurance Company as O.P. No.2 also contested the case by filing written statement denying the entire assertions of the claimant petitioners in the claim petition and finally submitted that the claim petition was subjected to strict proof.

**11.** Upon the pleadings of the parties, four numbers of issues were framed by Learned Tribunal below which were as follows:

**Issues**

- 1) Whether Birat Debbarma sustained injuries in a road traffic accident that occurred on 11.03.2021 at around 15:30 hours at Pada Para under Santirbazar Police Station involving vehicle bearing No.TR-08-C-8765 (Motor Bike) and subsequently on that day itself he succumbed to his injuries at Santirbazar Hospital;**
- 2) Whether the accident caused due to rash and negligent driving of driver of the said vehicle;**
- 3) Whether the claimant-petitioners are entitled to get compensation; if so, what will be the just amount of compensation and who is/are to pay the same?**
- 4) To what other relief/reliefs is the parties entitled?**

**12.** To substantiate the issues from the side of the claimant petitioners, one witness was examined and the claimant petitioners relied upon some documents which were marked as Exhibits in the case which are as follows:

- 1. Certified copy of FIR, ejahar, post-mortem report and final report (total 16 sheets) – Ext.1(I to XVI),**
- 2. Copy of Aadhar Card of deceased – Ext.2 (compared with original),**
- 3. Copy of identity card of deceased – Ext. 3 (compared with original),**
- 4. Copy of PRTC of deceased – Ext.4 (compared with original),**
- 5. Copy of admit card of deceased – Ext.5 (compared with original),**

**6. Copy of death certificate of deceased – Ext.6 (compared with original),**

**7. Copy of Aadhar Card of petitioner No.1 – Ext.7 (compared with original),**

**8. Copy of ration card – Ext.8 (compared with original)**

**13.** From the side of the claimant petitioners, another witness Debjit Murasingh was produced who was also examined as PW-2.

**14.** The O.P. No.1 was examined as O.P.W-1 and he adduced few documents for marking exhibits which were marked as Exhibits.

**1. Registration Certificate – Ext. A,**

**2. Driving Licence – Ext.B and**

**3. Insurance policy certificate – Ext.C.**

**15.** Finally, on conclusion of enquiry, Learned Tribunal below allowed the claim petition by the said judgment and award. The operative portion of the said judgment and award runs as follows:

**Order**

**"29. The instant application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is hereby partly allowed and a sum of Rs.16,22,000.00 (Rupees Sixteen Lac Twenty Two Thousand) only is awarded in favour of claimant-petitioners as compensation for the death of late Birat Debbarma, in a Road Traffic Accident, as aforesaid, and thus whole amount of compensation shall be paid by OP No.1, Rajib Debbarma, owner of TR-08-C-8765 (Motor Bike) within a period of one month from today. The aforesaid amount shall carry interest @ 7.5% per annum to be paid from the date of filing of claim-petition, i.e., from 08.10.2021 till the date of payment. The petitioners shall get the amount of compensation equally i.e. each of them shall get Rs.8,11,000.00.**

**30. In the event of deposit of the Awarded amount with interest, Rs.2,00,000.00 shall be released in favour of each of the claimant-petitioners out of their respective shares, in their respective bank accounts for enabling them to meet necessary expenses and the rest**

amount shall be kept in numbers of fixed deposit schemes each with Rs.2,00,000.00 in any Nationalized Bank for five years in their name separately as per their share.

31. No loan or withdrawal shall be permitted in the fixed deposit account nor joint name shall be allowed nor any cheque book , ATM card can be issued against fixed deposit account. However the interest to be credited in the fixed deposit may be released in favour of the claim-petitioners, as per Bank's norms.

32. Let a copy of this Award be furnished to the parties through their Ld. Counsels, for information.

33. The case is thus disposed of on contest. Enter the result in the relevant Register.

34. The case is thus disposed of on contest."

16. I have heard detailed argument of both the sides. Admittedly, in this case, there was no dispute on record in respect of the fact of accident on the alleged day and also the fact of death of the deceased (pillion rider). The claimant-petitioners although asserted that the deceased was a student and he was earning Rs.15,000/- per month but in this regard, they could not adduce any cogent evidence on record. So, in my considered view, Learned Tribunal below rightly after considering all the factors determined the monthly income of the deceased at Rs.10,000/-. However, as the deceased was a pillion rider and Learned Tribunal below on perusal of Exbt.C came to the observation that the policy was under 'Act policy' as no additional payment was paid for the pillion rider and relying upon the judgments, **United India Insurance Co. Ltd., Shimla v. Tilak Singh and others** reported in **(2006) 4 SCC 404**, **Oriental Insurance Company Limited v. Sudhakaran K V** reported in **(2008) 7 SCC 428**, Learned Tribunal below fastened the liability of payment of compensation upon the O.P.-owner-cum-driver as

pillion rider was not entitled to get any benefit under the Act policy.

**17.** In this regard, Hon'ble Supreme Court of India **National Insurance Company Ltd. V. Balakrishnan and another** reported in **(2013) 1 SCC 731** wherein in para Nos.24, 25 and 26 observed as under:

"24. It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the Circulars dated 16-11-2009 and 3-12-2009, that have been reproduced hereinabove, were issued.

25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated :2011 ACJ 1415 (Del) thus:(Yashpal Luthra case(supra), ACJ p.1424, para 27)

"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a

private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in *Bhagyalakshmi v. United Insurance Company Ltd.:(2009) 3 SCC (Civ) 87* and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

**18.** Further, Hon'ble Apex Court in *Jagtar Singh alias Jagdev Singh v. Sanjeev Kumar & Ors.* reported in **(2018) 15 SCC 189** in para Nos.2 and 3 observed as under:

2. It is submitted by Mr Yadunandan Bansal, learned counsel appearing for the appellant that the controversy is covered by the two-Judge Bench decision in *National Insurance Co. Ltd. V. Balakrishnan:(2013) 1 SCC 731*, wherein the Court has held thus: (SCC pp.743-44, paras 24-26)

"24. It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of

the policies issued by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the Circulars dated 16-11-2009 and 3-12-2009, that have been reproduced hereinabove, were issued.

25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated :2011 ACJ 1415 (Del) thus:(Yashpal Luthra case(supra), ACJ p.1424, para 27)

"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car.

There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in *Bhagyalakshmi v. United Insurance Company Ltd.:(2009) 3 SCC (Civ) 87* and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

3. In view of the aforesaid, we think it appropriate to set aside the judgment and order passed by the High Court and remit the matter for consideration whether the policy in question is a "comprehensive/package policy" or exclusively an "Act policy". After such consideration it shall pass a reasoned order. Needless to say, if any other contention is available to the insured, he will be at liberty to raise the same before the High Court."

From the aforesaid principles of law laid down by the Hon'ble Apex Court and also on perusal of Ext.C as relied upon by OP-owner-cum-driver, it appears that Ext.C i.e. the Insurance Policy certificate comes under the purview of package/comprehensive policy but the Learned Tribunal below opined that the same falls under Act policy for which the matter needs to be remanded back to the Learned Tribunal below to determine afresh in respect of Ext.C, if necessary, by examining the officials of Insurance Company.

**19.** In the result, the appeal filed by the appellant is disposed of on contest and the case is remanded back to the

Learned Tribunal below with a direction to examine as to whether Ext.C comes under Comprehensive/package policy or Act policy or not, if necessary by calling upon the officials of Insurance Company and also by affording scope to the parties to adduce fresh evidence, if they so desires and to deliver a fresh judgment in accordance with law in the light of the aforesaid judgments of the Ho'nble Supreme Court.

With this observation, this appeal is disposed of.

Send down the LCR along with a copy of this judgment.

Pending applications(s), if any, also stands disposed of.

**JUDGE**



सत्यमेव जयते